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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,125	07/21/2003	Gloria Falla	P1087USU	8031

7590 04/19/2006  
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EXAMINER

HALE, GLORIA M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/624,125	FALLA, GLORIA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gloria Hale	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-15 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-15 and 17-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7-21-03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6,8-15 and 17-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not clear as to what the "center" refers in regard to the demarcation line. It is not clear as to whether the center is a center when positioned "east to west" , "north to south" or if the center is a center core of the pad. The center has not been clearly shown in the figures. The present demarcation line appears to run in the lower third of the pad as seen in the figures.. Also it is not clear as to whether the demarcation line is on the front or rear of the pad especially since the figures show a solid line from the front of the pad. If the line is only to be seen from the back it should be a broken line from the front and an interior view of the pad would shown the solid demarcation line.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, 8-15 and 17-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1, 10, 19,21,22 and 25 it is not clear as to what the "center portion" of the pad refers or as to what the "metes and bounds" of the recitation encompasses. The figures show a line from the exterior or outward surface which is not disclosed in the original specification. Also the line runs through or along the lower third or a lower portion of the pad. Therefore the pad is not smooth on the exterior surface as stated in the specification on page 9, line 21. The line should be a broken line in the figures if it is not seen from the front or outer surface. It is also not clear as to whether the "center" being referred to is an "east to west " center or a north to south" center or a core center of the pad. Claim 22 is incomplete in line 11 after "during". In claim 23 it is not clear as to how the compressed portion forms a cup shape or as to how it is a cup shape. Does the cup shape mean that the bottom edge is curved or is a concave interior surface being claimed. The specification must clearly describe the structure of the claimed invention. In claims 24 and 25 there is no support in the specification fro the "upper portion" or " lower portion". It is also not clear as to where the portions begin and end or as to what they encompass.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the specification for "upper" and "lower" portions or upper part or lower part as in claims 24 and 25.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the demarcation line as being "not visible from the front surface"; that the demarcation line runs through the center must be shown ( and not through the lower portion as presently seen in the figures) or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6,8-15 and 17-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Mellinger (US 3,934,593).

Mellinger discloses a molded breast pad for a strapless adhesive brassiere comprising one or more first layers (18) formed of a first material which has a first loft and one or more layers (20) formed from a second material having a second loft (best seen in figure 2) wherein the molded breast pad is molded such that a portion thereof (at 10) is compressed so that the first loft and the second loft are substantially the same (as seen in figure 2 at the bottom at 10). (See Mellinger, col. 1, line 44 – col. 2, line 24). Mellinger discloses the one or more first layers (18) situated intermediate at least two of the one or more second layers (20) as seen in figure 2. The material (18) of Mellinger is a woven or knitted fabric and has elastomeric properties that differ from the first material in that they are less elastomeric . Mellinger also discloses the flexibility as being changed by manipulating the loft as claimed. (See Mellinger, col. 1, lines 54 –64). The compressed portion (at 10 as seen in figure 2) has different elastomeric properties (in

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that they are stiffer) than the remaining portion of the molded breast pad. (See Mellinger, col. 1, lines 54 –64). The molded breast pad of Mellinger includes a line of demarcation (at 24) separating the compressed portion from the rest of the breast pad. (See Mellinger, col. 2, line 11 and figure 3). The line of demarcation is formed on a body contacting surface of the pad so that the opposing surface of the breast pad is substantially smooth. The inner side at the demarcation line (24) is an edge which goes under the breast of the wearer when worn and the opposite outer side is a curved concave portion as seen in figure 3. the molded breast pads of Mellinger form a strapless adhesive bra when worn in pairs. Mellinger discloses a method of forming a breast pad including providing a material block of one or more first layers 18 and one or more second layers 20 of a second material each having different lofts that are adhesively connected and then molded to form 3-dimensional breast pads with a portion thereof (at 10, as seen at the bottom of figure 2) which has a reduced loft and with a distinct elastomeric properties (stiffer) than the remaining 3-dimensional breast pad. Mellinger also includes a line of demarcation (at 24; see col. 2, line 11 and figure 3) that separates the reduced loft area from the rest of the breast pad. (See col. 1, line 44 – col. 2, line 24 and figures 1-3). The Demarcation line of the Mellinger pad runs through an east to west center of the pad as in claims 1, 10, 19,21 and 22. In regard to claim 23 Mellinger discloses the pad as being compressed and which forms a cup shape as broadly claimed in that it curves about the breast and the lower edge portion is curved. The pad of Mellinger includes an upper portion and a lower portion about that bottom

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edge as in claims 24 and 25. The specific location of the upper portion and lower portion as not been claimed or defined in the specification.

### ***Response to Arguments***

Applicant's arguments filed 2-2-06 have been fully considered but they are not persuasive. The actual location of applicant's demarcation line is unclear and it is shown in the figures as being in the outer surface since it is a solid line in the figures. The Mellinger demarcation line runs through or crosses an east to west center. Applicants claims do not define in which plane the pad center is defined. The present claims do not define the three dimensional cup shape as retaining the concave interior when the pad is not worn or prior to and after use. The Mellinger demarcation line runs along the under breast contour and the compressed area line would not be seen since the contour surface is smooth and is under the breast. In regard to claim 23 applicant is arguing more than what has been claimed. Mellinger forms a three-dimensional cup shape. The shape has not been claimed as being a concave interior shape that is molded to retain the shape when it is not worn, before and after use and in storage. The Mellinger pad includes an upper and lower portion or part as broadly claimed and disclosed in applicant's specification. Applicant has not defined the metes and bounds of the upper and lower portions or parts in the figures or specification. In regard to claim 25 the claim does not claim that the upper part is above the demarcation line and that the lower part is below. The center has not been properly defined as discussed above.



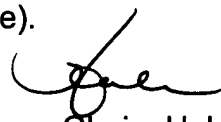
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Ullian patent is disclosed to show an interior demarcation line with the upper compressed portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale  
Primary Examiner  
Art Unit 3765